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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 2013-196

14 **ERLINDA ABITONA DELAPENA**
15 **3135 Campus Dr Apt 214**
16 **San Mateo, CA 94403**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

17 **Registered Nurse License No. 413916**

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RESPONDENT

FINDINGS OF FACT

1. On or about September 20, 2012, Complainant Louise R. Bailey, M.Ed.,RN, in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, filed Accusation No. 2013-196 against Erlinda Abitona Delapena (Respondent) before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

2. On or about July 31, 1987, the Board of Registered Nursing (Board) issued Registered Nurse License No. 413916 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2013, unless renewed.

3. On or about September 20, 2012, Respondent was served by Certified and First Class Mail copies of the Accusation No. 2013-196, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record which, pursuant to Business and Professions Code section 136 and/Title 16, California Code of Regulation, section 1409.1, is required to be reported and maintained with the Board, which was:

221 Cupertino Way
San Mateo, CA 94403.

1 4. Service of the Accusation was effective as a matter of law under the provisions of
2 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
3 124.

4 5. On or about October 30, 2012, the Certified Mail documents were returned and
5 marked by the U.S. Postal Service, "Return to Sender, Unclaimed." On or about October 3, 2012,
6 Respondent changed her address with the Board and on or about October 31, 2012, Respondent
7 was re-served at her current address of record with the Board which is:

8 3135 Campus Dr Apt 214

9 San Mateo, CA 94403.

10 On or about November 20, 2012, the signed Certified Mail Receipt was returned to our
11 office indicating a delivery date of November 10, 2012.

12 6. Business and Professions Code section 2764 states:

13 The lapsing or suspension of a license by operation of law or by order or decision of
14 the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive
15 the board of jurisdiction to proceed with an investigation of or action or disciplinary proceeding
16 against such license, or to render a decision suspending or revoking such license.

17 7. Government Code section 11506 states, in pertinent part:

18 (c) The respondent shall be entitled to a hearing on the merits if the respondent files a
19 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
20 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's
21 right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

22 8. Respondent failed to file a Notice of Defense within 15 days after service of
23 the Accusation upon her, and therefore waived her right to a hearing on the merits of Accusation
24 No. 2013-196.

25 9. California Government Code section 11520 states, in pertinent part:

26 (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
27 agency may take action based upon the respondent's express admissions or upon other evidence
28 and affidavits may be used as evidence without any notice to respondent.

1 10. Pursuant to its authority under Government Code section 11520, the Board after
2 having reviewed the proof of service dated September 20, 2012, signed by Brent Farrand, and the
3 proof of service dated October 31, 2012, signed by Kami Pratab and the returned envelope finds
4 Respondent is in default. The Board will take action without further hearing and, based on
5 Accusation No. 2013-196 and the documents contained in Default Decision Investigatory
6 Evidence Packet in this matter which includes:

7 Exhibit 1: Pleadings offered for jurisdictional purposes; Accusation No. 2013-196,
8 Statement to Respondent, Notice of Defense (two blank copies), Request
9 for Discovery and Discovery Statutes (Government Code sections
10 11507.5, 11507.6 and 11507.7), proof of service; and if applicable, mail
11 receipt or copy of returned mail envelopes;

12 Exhibit 2: License History Certification for Erlinda Abitona Delapena, Registered
13 Nurse License No. 413916;

14 Exhibit 3: Affidavits of Don Tsue and Ramona Nichols Smith;

15 Exhibit 4: Certification of costs by Board for investigation and enforcement in Case
16 No. 2013-196;

17 Exhibit 5: Declaration of costs by Office of the Attorney General for prosecution of
18 Case No. 2013-196;

19 Exhibit 6: Letter from California Department of Public Health.

20 The Board finds that the charges and allegations in Accusation No. 2013-196 are separately and
21 severally true and correct by clear and convincing evidence.

22 11. Taking official notice of Certification of Board Costs and the Declaration of Costs by
23 the Office of the Attorney General contained in the Default Decision Investigatory Evidence
24 Packet, pursuant to the Business and Professions Code section 125.3, it is hereby determined that
25 the reasonable costs for Investigation and Enforcement in connection with the Accusation are
26 \$9,270.75 as of November 29, 2012.

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1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Erlinda Abitona Delapena has
3 subjected her following license(s) to discipline:

4 a. Registered Nurse License No. 413916

5 2. The agency has jurisdiction to adjudicate this case by default.

6 3. The Board of Registered Nursing is authorized to revoke Respondent's license(s)
7 based upon the following violations alleged in the Accusation, which are supported by the
8 evidence contained in the Default Decision Investigatory Evidence Packet in this case.

9 a. Violation of Business and Professions Code section 2761(a)(1) -
10 Unprofessional Conduct, Gross Negligence.

11 b. Violation of Business and Professions Code section 2761(a)(4) - Disciplinary
12 action by Another Governmental Agency.

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ORDER

IT IS SO ORDERED that Registered Nurse License No. 413916, heretofore issued to Respondent Erlinda Abitona Delapena, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on APRIL 11, 2013.

It is so ORDERED MARCH 12, 2013



Board of Registered Nursing
Department of Consumer Affairs
State of California

Attachment:

Exhibit A: Accusation No. 2013-196

Exhibit A

Accusation No. 2013-196

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JUDITH J. LOACH
Deputy Attorney General
4 State Bar No. 162030
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5 San Francisco, CA 94102-7004
Telephone: (415) 703-5604
6 Facsimile: (415) 703-5480
E-mail: Judith.Loach@doj.ca.gov
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2013-196**

13 **ERLINDA ABITONA DELAPENA**
221 Cupertino Way
14 San Mateo, CA 94403

ACCUSATION

15 **Registered Nurse License No. 413916**

Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about July 31, 1987, the Board of Registered Nursing issued Registered Nurse
23 License Number 413916 to Erlinda Abitona Delapena ("Respondent"). The Registered Nurse
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on April 30, 2013, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board of Registered Nursing ("Board"),
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
3 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
4 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
5 Nursing Practice Act.

6 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
7 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
8 licensee or to render a decision imposing discipline on the license.

9 6. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
10 surrender and/or cancellation of a license shall not deprive the Board of jurisdiction to proceed
11 with a disciplinary action during the period within which the license may be renewed, restored,
12 reissued or reinstated

13 7. Section 2761 of the Code states:

14 "The board may take disciplinary action against a certified or licensed nurse or deny an
15 application for a certificate or license for any of the following:

16 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

17 "..."

18 COST RECOVERY

19 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
20 administrative law judge to direct a licensee found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case.

23 STATEMENT OF FACTS

24 9. At all relevant times Respondent was employed as a staff nurse at San Mateo Medical
25 Center, 3A/B Inpatient Psychiatric Unit, San Mateo, California.

26 10. On the evening of March 29, 2010, up to the morning of March 30, 2010, Respondent
27 was assigned to Patient AR ("AR"), a 23 year-old female.

28 11. Between 3:00 to 4:00 a.m., on March 30, 2010, Respondent was informed that

1 Patient RO ("RO"), a 27 year-old male was observed leaving AR's room and that AR was seen
2 pulling up her pants.

3 12. Respondent failed to interview and/or evaluate AR after the incident.

4 13. At approximately 10:53 a.m., on March 30, 2010, AR reported to staff that she had
5 been raped earlier in the morning and identified RO as her assailant. A medical examination
6 confirmed that RO had sexual contact with AR.

7 FIRST CAUSE FOR DISCIPLINE

8 (Incompetence -- Failure to Conduct Assessment of AR)

9 14. Respondent is subject to disciplinary action for unprofessional conduct under Code
10 section 2761, subdivision (a)(1), as defined in title 16 of the Code of Regulations, sections 1443
11 and 1443.5, in that she failed to evaluate AR after being informed that RO was observed leaving
12 her room and that AR was seen pulling up her pants. The facts in support of this cause for
13 discipline are set forth above in paragraphs 9 through 13.

14 SECOND CAUSE FOR DISCIPLINE

15 (Gross Negligence -- Failure to Comply With Observation Protocols)

16 15. Respondent is subject to disciplinary action for unprofessional conduct under Code
17 section 2761, subdivision (a)(1), as defined in title 16 of the Code of Regulations, section 1442, in
18 that she failed to comply with the Inpatient Psychiatric Unit patient observation protocols. The
19 facts are as follows:

20 a. The Inpatient Psychiatric Unit protocols provided that at a minimum each patient was
21 to be observed every 15 minutes with their location and activity/behavior being recorded on a
22 document entitled "Observation Checklist." The staff member performing rounds was required to
23 initial the Observation Checklist for the rounds they completed.

24 b. From 11:45 p.m., on March 29, 2010 up to 7:00 a.m., on March 30, 2010, staff
25 member Hernandez was assigned to perform the 15 minute observation checks on all patients.
26 However, at approximately 1:45 a.m., on March 30, 2010, Hernandez took her break, returning to
27 the unit at approximately 2:45 a.m. Respondent had assumed responsibility for performing the 15
28 minute observation checks during this time. However, Respondent's initials did not appear on the

1 Observation Checklist during the time she was relieving Hernandez.

2 THIRD CAUSE FOR DISCIPLINE

3 (Discipline By Another Governmental Agency)

4 16. Respondent is subject to disciplinary action under Code section 2761, subdivision
5 (a)(4), in that on August 16, 2010, she received a letter from the San Mateo County Medical
6 Center, citing "Dishonesty," "Disrespectful or discourteous conduct toward a county officer or
7 official, another employee, or a member of the public," and "Failure to follow policy(ies) or work
8 rule(s), or negligence in the performance of one's duties." The letter from Respondent's employer
9 referenced its intent to dismiss her from her position as a staff nurse effective August 31, 2010,
10 based on the incident as set forth above in paragraphs 9 through 13 and 15.

11 PRAYER

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Board of Registered Nursing issue a decision:

14 1. Revoking or suspending Registered Nurse License Number RN 413916, issued to
15 Erlinda Abitona Delapena;

16 2. Ordering Erlinda Abitona Delapena to pay the Board of Registered Nursing the
17 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
18 Professions Code section 125.3;

19 3. Taking such other and further action as deemed necessary and proper.

20 DATED: September 20, 2012

21 *Louise R. Bailey*
22 LOUISE R. BAILEY, M.Ed., RN
23 Executive Officer
24 Board of Registered Nursing
25 Department of Consumer Affairs
26 State of California
27 Complainant
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